

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND

THE HON'BLE MS. JUSTICE J.UMA DEVI

WRIT PETITION No. 10609 of 2017

ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The petitioners, in this writ petition, seek a writ of certiorari to call for records pertaining to the order in I.A.No. 532 of 2017 in S.A.No. 546 of 2016 dated 10.3.2017, and quash the same as arbitrary and illegal.

It is not in dispute that the petitioners are due a sum in excess of Rs.5.35 crores to the respondent-bank as on 1.8.2016. Against the notice, issued under Section 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act"), the petitioners invoked the jurisdiction of the Debts Recovery Tribunal at Hyderabad (DRT) filing S.A.No. 546 of 2016 before it. They filed three applications in I.A.Nos. 520, 531 and 532 of 2017. I.A.No. 532 of 2017 was filed requesting the DRT to stay all further proceedings of the respondent-bank pursuant to the E-Auction sale notice dated 12.2.2017, published in the Times of India daily Newspaper dated 12.2.2017, fixing the date of auction of petition 'A' schedule property as 14.3.2017.

By the order, impugned in this writ petition, the DRT observed that it was a matter of record that the petition 'B' schedule

property could not be identified fully with boundaries; under such circumstances, directing the respondent-bank to proceed only against the petition schedule 'B' property was not just and proper; being the secured creditor, it was the prerogative of the bank to proceed against any of the secured assets which may realise its dues; and having regard to the facts and circumstances of the case, and in the interests of justice, interim stay could be granted subject to certain conditions. The DRT granted stay of all further proceedings, including the auction sale of petition 'A' schedule property, subject to the petitioners depositing 30% of the total outstanding dues in two equal instalments - the first instalment of 15% of the amounts due was directed to be deposited on or before the date of auction i.e., 14.3.2017, and the second instalment within two weeks thereafter, with the respondent-bank. The DRT observed that, in the event the petitioners failed to comply with any of the conditions, the interim stay would stand vacated, and the respondent-bank would be at liberty to proceed with the auction sale of the petition schedule property in accordance with law.

Sri Ambadipudi Satyanarayana, learned Standing Counsel for the respondent-bank, would submit that the cause in the writ petition does not survive as I.A.No. 532 of 2017, filed by the petitioners herein before the DRT seeking stay of all further proceedings pursuant to E-Auction sale notice dated 12.2.2017, has become infructuous; no bidder came forward to participate in the

auction sale of 'A' schedule property held on 14.3.2017; and the petitioners have also not complied with the interim order passed by the DRT, and have not paid any amount pursuant to the interim order passed by the DRT.

Sri B.V. Subbaiah, learned Senior Counsel, appearing for the petitioners, would submit that the petitioners do not question their liability to the respondent-bank; they have also expressed their inability to repay the said dues to the respondent-bank; while 'A' schedule property is valued at Rs.5.07 crores, 'B' schedule property is valued at Rs.7.33 crores; as the debt due to the respondent-bank, even as on 1.8.2016, was around Rs.5.35 crores, sale of 'A' schedule property would not suffice to discharge the petitioners' dues in its entirety; on the other hand, if 'B' schedule property is put to sale, and since its value is held to be Rs.7.33 crores, it would more than suffice to realise the entire amount due from the petitioners herein to the respondent-bank; the petitioners are carrying on business in the 'A' schedule property; the livelihood of several employees are at stake; the petitioners would be able to save 'A' schedule property, if the respondent-bank were to sell 'B' schedule property and realise the entire amount due to them; and this Court should, therefore, exercise its equity jurisdiction to direct the respondent-bank to do so.

Sri Ambadipudi Satyanarayana, learned Standing Counsel for the respondent-bank would submit that the boundaries of 'B'

schedule property are not available; the bank's valuer had refused to value the said property in the absence of its boundaries being fixed; the very fact that the petitioners themselves have sought the assistance of the revenue authorities to have the land surveyed, and the boundaries fixed, was itself proof that the boundaries of 'B' schedule property were not available; and since Section 13 (8) of the SARFAESI Act enables the borrower to redeem the property on payment of the entire dues together with costs, charges and expenses before the date of publication of the notice for public auction, nothing prevents the petitioners from finding a buyer for 'B' schedule property, request the bank for permission to sell the property by private treaty, and thereafter ensure that the entire amounts due to the bank are paid from the amounts realised on sale of 'B' schedule property.

As noted hereinabove, the order impugned in this writ petition is the interlocutory order passed by the DRT in IA No. 532 of 2017 in SA No. 546 of 2016 dated 10.3.2017. The relief sought for in the said IA was to stay all further proceedings pursuant to the E-Auction notice dated 12.2.2017 fixing the date of auction of 'A' schedule property as 14.3.2017. The submission of Sri A. Satyanarayana, learned Standing Counsel for the respondent-bank, is that no bidders participated in the auction held on 14.3.2017 and the 'A' schedule property could not be brought to sale. As the relief sought for in I.A.No. 532 of 2017 has itself become infructuous, as no

bidder came forward to participate in the auction held on 14.3.2017, the cause in the present writ petition, wherein the validity of the said interim order is under challenge, does not survive.

While the submission of Sri B.V. Subbaiah, learned Senior Counsel appearing for the petitioners, that the bank would be benefited if the 'B' schedule property were to be sold as the value of the said property is Rs.7.33 crores which is more than amount due to the bank, is no doubt attractive, the respondent-bank has the right to choose which of the mortgaged properties it should bring to sale to recover the debt due. It is the case of the respondent-bank that 'B' schedule property could not even be put to sale in the absence of its valuation; and the property could not be valued since its boundaries were not fixed.

It would be wholly inappropriate for us to examine these contentions, for the first time in writ proceedings under Article 226 of the Constitution of India, as the petitioners have themselves filed IA No. 520 of 2017 before the DRT seeking appointment of an Advocate Receiver for sale of the petition 'B' schedule property by public auction. Since all the contentions, which have now been urged before this Court, can as well be urged by the petitioners before the DRT in IA No. 520 of 2017, suffice it to direct the DRT-3rd respondent to consider and pass orders in IA No. 520 of 2017 in accordance with law, within two months from the date of receipt of a copy of this order. We make it clear that we have not expressed

any opinion on the merits of the petitioners' claim, and this order shall not preclude the petitioners from securing a buyer for 'B' schedule property, and seek permission of the respondent-bank to have the said property sold to such buyer.

The writ petition stands disposed of accordingly.
Miscellaneous Petitions, if any pending, shall also stand closed.
There shall be no order as to costs.

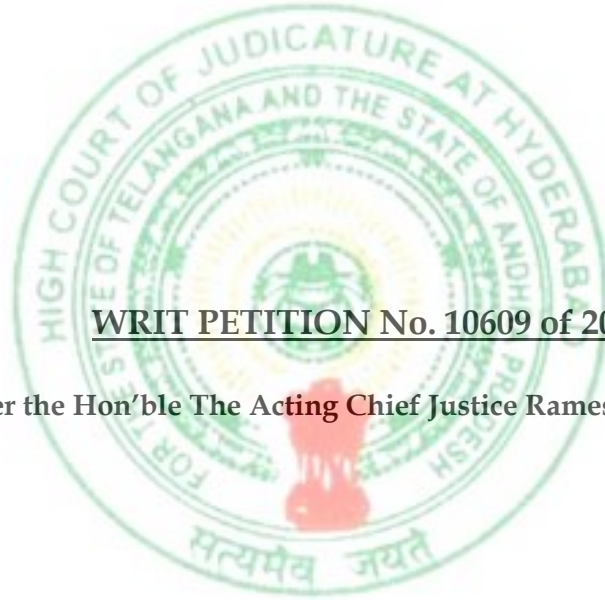
(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

23.08.2017
Kr/Gsn



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Dt. 23.8.2017